

Federal agencies, or where a group of actions by the Corporation and one or more other Federal agencies are directly related to each other because of their functional interdependence or geographical proximity, the Corporation will seek designation as lead agency for those actions that directly relate to implementation of the Plan and those actions that relate solely to the Development Area.

(b) For an action that qualifies as one for which the Corporation will seek designation as lead agency, the Corporation will promptly consult with the appropriate Federal agencies such as the National Capital Planning Commission, the Department of the Interior, and the General Services Administration to establish lead agency and co-operating agency designations.

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(a) Specific Corporation actions categorically excluded from the requirements for environmental assessment and an EIS are:

- (i) Personnel actions;
- (ii) Administrative actions and operations directly related to the operation of the Corporation (e.g., purchase of furnishings, services, and space acquisition for the Corporation offices);
- (iii) Property management actions related to routine maintenance, operation, upkeep, etc., of real property owned by the Corporation;
- (iv) Review of permit applications relating to minor development activities in the Development Area (sign approval, interior renovations, minor exterior changes to facade, etc.);
- (v) Promulgation of development general and square guidelines that implement the Plan as covered by the Final EIS;
- (vi) Contracts, work authorizations, procurement actions directly related to and implementing proposals, programs, and master agreements for which an environmental assessment or an environmental assessment and an EIS have been prepared, or which are related to administrative operation of the agency;
- (vii) Acquisition/disposal by lease, easement, or sale of real and personal property owned by the Corporation subsequent to and implementing a prior decision of the Board of Directors for which an environmental assessment or an assessment and an EIS were prepared;
- (viii) Activities directly related to and implementing the Public Improvements Program of the Corporation approved by the Board of Directors, and which are covered by

a previously prepared environmental assessment or an environmental assessment and an EIS;

(ix) Demolition actions preparatory for development by the Corporation, other public agencies, or private developers subsequent to approval of development proposals made by the Board of Directors;

(x) Development proposal identical to the requirements of the Plan and which was included in an EIS previously prepared.

(b) An action which falls into one of the above categories may still require the preparation of an EIS or environmental assessment if the designated corporation official determines it meets the criteria stated in §907.8(a) or involves extraordinary circumstances that may have a significant environmental effect.

PART 908—POLICY AND PROCEDURES TO FACILITATE THE RETENTION OF DISPLACED BUSINESSES AND RESIDENTS IN THE PENNSYLVANIA AVENUE DEVELOPMENT AREA

Subpart A—General

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- 908.2 Purpose.
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- 908.10 Criteria of Qualified Persons.
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- 908.12 Retention on the List of Qualified Persons.
- 908.13 Rights of Qualified Persons.
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- 908.30 Request for review.
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- 908.32 Review procedures.
- 908.33 Final determination.

AUTHORITY: 40 U.S.C. 874(e); 40 U.S.C. 875(8); 40 U.S.C. 877(d).

SOURCE: 48 FR 55459, Dec. 13, 1983, unless otherwise noted.

Subpart A—General

§ 908.1 Policy.

One of the goals of The Pennsylvania Avenue Plan—1974, as amended, (*The Plan*) is the reduction of hardships experienced by businesses and residents within the development area of the Pennsylvania Avenue Development Corporation (*the Corporation*) when they are displaced as a result of implementation of The Plan. It is the policy of the Corporation to provide displaced businesses and residents with a preferential opportunity to relocate within the development area so that they may share in the benefits brought to the area by the implementation of The Plan. This rule shall not be construed to affect the eligibility, rights or responsibilities of persons who may be entitled to benefits provided under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as implemented by the Corporation (36 CFR part 904).

§ 908.2 Purpose.

The purpose of this rule is to:

- (a) Provide a meaningful opportunity to businesses displaced by the Corporation's program to return to, or remain in, the Development Area;
- (b) Establish procedures and requirements for displaced occupants by which they may establish and later exercise their preferential right to return to the Development Area;
- (c) Establish procedures which the Corporation and private Developers must follow in providing Qualified Persons with the opportunity to obtain their preferential right to return to the Development Area.

§ 908.3 Definitions.

The following definitions shall apply to this part:

- (a) *Developer* means a Person or team of Persons that has received preliminary approval for a development proposal or has been designated by the Corporation as Developer pursuant to a development competition.
- (b) *Development Area* means the area described in section 2 (f) of Pub. L. 92-578, October 27, 1972, as amended (40 U.S.C. 871 (f)), and for which the Plan

has been prepared and will be implemented by the Corporation.

(c) *List* means the List of Qualified Persons maintained by the Corporation as provided in § 908.11(a) of this rule.

(d) *Newly developed space* means any leaseable part of a new building in the Development Area upon which construction was commenced after October 27, 1972 or an existing building in the Development Area which after October 27, 1972 underwent substantial remodeling, renovation, conversion, rebuilding, enlargement, extension or major structural improvement, but not including ordinary maintenance or remodeling or changes necessary to continue occupancy.

(e) *Person* means a partnership, company, corporation, or association as well as an individual or family, but does not include a department, agency, or instrumentality of any Federal, state, or local government.

(f) *Previous location* means the space from which the Eligible Person was or is being displaced as a result of the Corporation's or Developer's acquisition of real property, or as a result of receiving a written order to vacate from the Corporation.

Subpart B—Preferential Right To Relocate

§ 908.10 Criteria of Qualified Person.

Qualified Person is either

- (a) A Person whose place of business or residence was located in the Development Area and was displaced from its location by:
 - (1) The Corporation in connection with the acquisition of fee title, or a lesser interest, in the real property containing such business or residence; or
 - (2) A Developer in implementing a development project in accordance with the Plan; or
- (b) A Person whose place of business or residence is located in the Development Area and who has received notice of initiation of negotiations by the Corporation for purchase of the real property containing such business or residence.

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§ 908.11 List of Qualified Persons.

(a) The Corporation shall develop and maintain a List of Qualified Persons who meet the criteria of Qualified Person as defined in § 908.10 and who ask to be placed on that list.

(b) The Corporation shall notify each occupant displaced by development provided an address is available to the Corporation, of this policy and the procedures to be followed for placement on the List.

(c) A person who wishes to be included on the List shall notify the Corporation in writing to that effect. The notice to the Corporation shall include:

(1) The address of the Previous Location;

(2) A short statement indicating the nature of the Qualified Person's occupancy;

(3) The amounts and type of space occupied prior to displacement;

(4) A description of any specialized equipment or unusual requirements for occupancy; and

(5) A copy of the notice to vacate from the Developer or notice of initiation of negotiations from the Corporation if either of these was received by the Qualified Person.

(d) The Corporation shall:

(1) Review the information furnished by the Person including any notice;

(2) Request additional information, if necessary to make a determination of the Person's qualifications;

(3) Determine whether the Person is qualified to be listed, and if so place the Person on the list; and

(4) Notify the Person of its determination.

(e) The Corporation urges that any Person who wishes to be placed on the List request such placement as soon as the Person meets the criteria for Qualified Person established in § 908.10, and all Persons are encouraged to do so no later than one year of the time the Person is displaced in order to increase the opportunity to obtain Newly Developed Space. However, no Person shall be denied placement on the List because such placement was not requested within one year of displacement.

36 CFR Ch. IX (7-1-06 Edition)

§ 908.12 Retention on the List of Qualified Persons.

(a) Once placed on the List, the Corporation shall keep a Person on the List until:

(1) The Corporation receives a written request from the Qualified Person to be removed from the List;

(2) The Qualified Person is relocated into or has a binding lease commitment for Newly Developed Space;

(3) The Qualified Person sells, transfers, or merges its interest in the displaced business, unless after such change in ownership Qualified Persons have at least fifty-one percent of the interest in the resulting business; or

(4) The Corporation receives a mailing returned from the Post Office that the Person is not located at the known address and left no forwarding address, provided that the Corporation shall reinstate any such removed name if the Person provides the Corporation with a current address; or

(5) The Corporation ceases operations upon completion of the Plan.

(b) A Qualified person relocated into newly developed space, may only again be placed on the List:

(1) If another branch of its business is subsequently displaced from space within the Development Area which is not Newly Developed Space; and

(2) If all requirements of § 908.10 of the rule are met with regard to the subsequent displacement.

§ 908.13 Rights of Qualified Persons.

(a) As provided in §§ 908.14(c) and 908.15(b), each Qualified Person on the List shall receive notices of opportunities to occupy Newly Developed Space as opportunities become available.

(b) As provided in §§ 908.14(d) and 908.15(c), each Qualified Person on the List shall be notified of any subsequent changes in the leasing plan which are, in the Corporation's opinion, major.

(c) Each Qualified Person on the List, who is interested in negotiating for occupancy of Newly Developed Space shall, within two weeks after receiving notice of a tenancing opportunity, provide written notice of its interest in the tenancing opportunity to the Developer, and furnish a copy of the written notice to the Corporation.

(d) Each Qualified Person on the List who provides a written notice of interest shall have ninety days following the Developer's receipt of the notice of interest for exclusive negotiations with the Developer for occupancy of the Developer's Newly Developed Space. During the ninety day period the Developer, subject to §§908.14 and 908.15 of this rule, shall not negotiate tenanting opportunities for the same Newly Developed Space requested by the Qualified Person with other than Qualified Persons.

(e) A Qualified Person's opportunity to occupy Newly Developed Space shall not be limited to the square on which its previous location was situated but extends throughout the Development Area. Similarly, no Qualified Person has an absolute right to return to the square where previous location was situated.

(f) A Qualified Person's opportunity to occupy space may be exercised in the Development Area at any time during the Corporation's existence, but such opportunity may only be exercised within Newly Developed Space.

(g) A Qualified Person has one opportunity to occupy Newly Developed Space for each location in the Development Area from which it is displaced.

(h) The Corporation cannot assure any Qualified Person that it will be relocated to Newly Developed Space.

§908.14 Requirements placed on developers that have acquired or leased real property from the Corporation.

Developers who have acquired or leased real property from the Corporation shall:

(a) Notify the Corporation, within six months of the approval of the Developer's building permit, of its leasing plan and when it intends to begin seeking tenants. The Developer shall include at least the following in its leasing plan:

- (1) The mix of uses and estimated square footage for each use;
- (2) The rentals to be charged by type of use and location;
- (3) The terms and conditions to be included in the leases, including financial participation;

(4) The selection criteria to be used by either the Developer or its agents; and

(5) The projected completion and occupancy dates.

(b) Notify the Corporation of any changes in the Developer's leasing plan.

(c) Send registered letters to all Qualified Persons on the List notifying them that the developer is seeking tenants and advising them that they have two weeks to provide the developer with written notice of their interest and ninety days thereafter for exclusive negotiations. This letter shall include a description of the mix of uses in the project, the rentals to be charged by type of use and location, the terms and conditions to be included in leases, the projected completion and occupancy dates, and the selection criteria to be used to choose tenants. The Developer will furnish the Corporation with an enumeration of the Qualified Persons it has notified and a copy of the letter and any attachments sent.

(d) Notify in writing each Qualified Person whom the Developer has previously contacted of changes in the Developer's leasing plan which the Corporation determines are major.

(e) Provide a ninety day period for exclusive negotiations with Qualified Persons, said period to commence with the timely receipt by the Developer of the written notice of interest from the Qualified Person. During this period the Developers shall:

(1) Negotiate tenanting opportunities only with Qualified Persons who have notified the Developer of their interest in the opportunity;

(2) Not seek other potential tenants or negotiate agreements to occupy the Newly Developed Space requested by Qualified Persons with anyone other than those Qualified Persons who have timely notified the Developer of their interest in the opportunity, except that a Developer may negotiate agreements with equity partners in the project who will become tenants or with prime tenants; and

(3) Negotiate in good faith with interested Qualified Persons and seek to accommodate them as tenants.

(f) Report to the Corporation at the conclusion of the ninety day period of

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exclusive negotiations concerning the results of its efforts. In particular the developer shall:

(1) State the number of responses which it received from Qualified Persons;

(2) State the number of Qualified Persons with whom it has reached agreement and the name of each;

(3) State the number of Qualified Persons with whom it is still negotiating and the name of each; and

(4) Describe the Developer's negotiations with each Qualified Person including a summary of each communication between the Developer and each Qualified Person with whom agreement has not been reached, the Developer's best offer to each Qualified Person, the best offer of each Qualified Person to the Developer, and the specific reasons why any Qualified Persons did not meet the selection criteria.

(g) Report to the Corporation quarterly thereafter until the project is fully leased or there are no more Qualified Persons interested in leasing space, whichever first occurs, concerning the results of its negotiations with Qualified Persons. In particular the Developer shall state:

(1) The number of Qualified Persons with whom it has reached agreement and the name of each;

(2) The percentage of square feet of total leasable space which it has leased to Qualified Persons; and

(3) A description of the Developer's negotiations with each Qualified Person including a summary of each communication between the Developer and each Qualified Person with whom agreement has not been reached, the Developer's best offer to each Qualified Person, the best offer of each Qualified Person to the Developer, and the specific reason why the Developer determines any Qualified Person did not meet its selection criteria.

§ 908.15 Requirements placed on developers that have not acquired or leased real property from the Corporation.

The Corporation shall encourage Developers that do not acquire or lease real property from the Corporation to lease to Qualified Persons.

36 CFR Ch. IX (7-1-06 Edition)

(a) While reviewing the Developer's preliminary or final plans, the Corporation shall explore the tenanting opportunities proposed by the Developer and furnish the Developer with the List.

(b) The Corporation shall notify those Qualified Persons on the List who appear to be prospective tenants for the available tenanting opportunities of this tenanting opportunity. To the extent that such information is available to the Corporation, these notices shall specify the mix of uses in the project, the rentals to be charged by type of use and location, the terms and conditions to be included in the leases, the projected completion and occupancy dates and the selection criteria to be used in choosing tenants.

(c) The Corporation shall notify in writing each Qualified Person whom it has previously contacted of changes in the Developer's plan provided the Corporation is informed of the changes and determines the changes are major.

(d) The Corporation shall request that the Developer make every effort to lease space to Persons on the List and to report to the Corporation the names of those Qualified Persons who have reached an agreement with the Developer.

Subpart C [Reserved]

Subpart D—Review Procedure

§ 908.30 Request for review.

(a) Any Person aggrieved by a determination concerning placement or retention on the List or any other right under subpart B of this rule, may request that the determination be reviewed.

(b) The applicant's request for review, shall be in writing, shall state the reasons for requesting review, and shall describe the relief sought (including all information the aggrieved person believes to be relevant). The applicant's written request shall be sent to the Director of Real Estate, Pennsylvania Avenue Development Corporation, 1331 Pennsylvania Avenue, NW., Suite 1220 North, Washington, DC 20004.

[48 FR 55459, Dec. 13, 1983, as amended at 50 FR 45824, Nov. 4, 1985]

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§ 908.31 Time for filing request for review.

Any person who files a request for review must do so within one year of the date of the determination for which review is sought.

§ 908.32 Review procedures.

(a) Upon receipt of a request for review, the Director of Real Estate shall compile all pertinent records maintained on the aggrieved person's application, including the following:

(1) Information on which the original determination was based, including applicable regulations;

(2) Information submitted by the applicant including the request for review and any information submitted in support of the application;

(3) Any additional information the Director of Real Estate considers relevant to a full and fair review of the application and which he obtains by request, investigation or research.

(b) The Director of Real Estate shall submit the complete file together with a summary of the facts and issues involved in the application to the Chairman of the Board of Directors of the Corporation or his or her designee (*Chairman or designee*) within 30 days of receipt of the request for review.

(c) The Chairman may either review the application or designate one or more persons from the Board of Directors or from outside the Corporation to review the claim. During review the Chairman or designee(s) may consult with the Corporation's Office of General Counsel to obtain advice on legal issues arising from the claim.

§ 908.33 Final determination.

(a) The Chairman or designee(s) shall make a final determination on the claim within 45 days of receipt of the file from the Director of Real Estate. The final determination shall be in the form of Findings of Fact and Conclusions of Law and shall be sent to the aggrieved person and to the Director of Real Estate.

(b) If the applicant is determined to have been aggrieved, the Director of Real Estate shall promptly take appropriate action in accordance with the final determination.

(c) A notice of the right to judicial review shall be sent to the aggrieved person with the final determination.

PART 909—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Sec.

909.101 Purpose.

909.102 Application.

909.103 Definitions.

909.104-909.109 [Reserved]

909.110 Self-evaluation.

909.111 Notice.

909.112-909.129 [Reserved]

909.130 General prohibitions against discrimination.

909.131-909.139 [Reserved]

909.140 Employment.

909.141-909.148 [Reserved]

909.149 Program accessibility: Discrimination prohibited.

909.150 Program accessibility: Existing facilities.

909.151 Program accessibility: New construction and alterations.

909.152-909.159 [Reserved]

909.160 Communications.

909.161-909.169 [Reserved]

909.170 Compliance procedures.

909.171-909.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 22896, June 23, 1986, unless otherwise noted.

§ 909.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 909.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 909.103 Definitions.

For purposes of this part, the term—
Assistant Attorney General means the Assistant Attorney General, Civil